to furnish reports to the Federal Trade Commission, as directed by the District Court, the District Court shall exclude the number of days during which the requirement to furnish reports to the Federal Trade Commission was suspended by the several stays granted by the District Court and the Court of Appeals, as follows:

1. The order of the District Court dated June 20, 1960 (not printed in the Transcript of the Record in this Court), which suspended and enjoined enforcement of the Court's judgment for a period of 20 days. Annexed hereto, marked Exhibit A, is a true and correct copy of said order.

2. The order of the Court of Appeals entered July 8, 1960 (not printed in the Transcript of the Record in this Court), which stayed and suspended the enforcement of the provisions of the District Court's order and judgment requiring the furnishing of the documents not previously furnished pursuant to such order and judgment pending a determination of the government's appeal and petitioner's cross-appeal in the Court of Appeals. Annexed hereto, marked Exhibit B, is a true and correct copy of said order.

3. The order of the Court of Appeals dated January 10, 1961, staying the mandate of that Court for a period of 30 days pending application to this Court for a writ of certiorari and thereafter pursuant to the provisions of Rule 28(c)(2) of the Court of Appeals Rules* (R. 235).

By motion dated February 7, 1961, filed with the petition for certiorari, petitioner also moved for a stay in

* Rule 28(c)(2) provides:

"(2) Provided that if within 30 days there is filed with the clerk of this court the certificate of the clerk of the Supreme Court of the United States that the certiorari petition, record, and briefs have been filed, thereupon the stay shall continue until the final disposition of the case by the Supreme Court. Immediately upon the filing of a copy of an order denying the writ, the clerk of this Court shall issue the mandate."

this Court pending final determination of the petition for certiorari, which was granted in the order of this Court allowing certiorari (R. 236-237).

The stays granted by the District Court and by the Court of Appeals pending the determination of the appeal in that court were not a part of the Transcript of the Record in this Court and were not noted in the opinion of this Court. Obviously without knowledge of the stays granted below, the Court said (Slip Opinion at page 16):

> "• • • nor did petitioner seek a stay once the litigation had begun."

Immediately after the filing by respondent of a notice of appeal, appealing from the dismissal of Count Two of the complaint (the claim for forfeitures) petitioner sought and was granted a stay of the requirement to furnish reports (Exhibit A hereto). We respectfully submit that the stay granted by the District Court and the subsequent stays of the Court of Appeals have the same legal effect as the stay granted by this Court which expressly tolled the accumulation of forfeitures under §10 of the Federal Trade Commission Act "as of the filing of its petition on February 7, 1961" (R. 237).

The third unnumbered paragraph of Section 10 of the Federal Trade Commission Act reads as follows:

> "If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day *of the continuance of such failure*, • • •" (italics supplied.)

The District Court's order and judgment (R. 213-216) required that most of the documents and records to be

furnished by petitioner be delivered within 30 days after entry of the judgment and also required delivery of the balance, consisting of reports to trade associations and retained copies of reports to the Bureau of the Census, within 60 days. All the documents and records required to be furnished the Commission within 30 days were furnished the Commission on May 20, 1960, prior to the expiration of the 30-day period.

The stays hereinabove listed relieved petitioner from the requirement to furnish the two remaining categories of documents continuously from and after June 20, 1960, the date on which the categories of documents were to be furnished in the 60-day period.*

There was no "failure" of petitioner, within the meaning of the language of the third unnumbered paragraph of Section 10 of the Federal Trade Commission Act, to furnish any reports during the periods of the several stays.

Accordingly, the period for which petitioner is liable for forfeitures of $100 per day commenced July 20, 1959, the 30th day following the first notice of default to petitioner, and terminated June 20, 1960, the date of the stay order of the District Court, Exhibit A hereto.

Thus the total number of days for which forfeiture may be directed to be paid by the final judgment of the District Court does not exceed 336, making the maximum total forfeitures $33,600.

At the date hereof, petitioner's attorney has not received notice of settlement of any proposed order to be entered in the District Court pursuant to the final judgment of this Court. In anticipation of a final judgment of the District Court, on January 23, 1962, petitioner delivered to the United States Attorney for the Southern District of New York copies of reports to the Census Bureau, the

* The portion of the stay relating to copies of reports to trade associations was vacated by the Court of Appeals by order entered April 26, 1961, and such copies were thereafter duly furnished.

only documents not theretofore furnished pursuant to the original order of the District Court entered April 21, 1960 (R. 213-216).

For the reasons stated, petitioner respectfully prays that an order be made herein recalling and correcting or amending the judgment of this Court, as hereinabove specified.

Dated: New York, N. Y.,
January 23, 1962.

Respectfully submitted,

HORACE R. LAMB

Attorney for Petitioner

Exhibit A

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

against

ST. REGIS PAPER COMPANY,

Defendant.

ORDER

A motion having been made by defendant for an Order enjoining and suspending any and all proceedings to enforce the judgment made and entered herein on April 21, 1960 pending the determination by the United States Circuit Court for the Second Circuit of defendant's cross-appeal from said judgment or for such other period as may be just and proper and said motion having duly come on to be heard on June 17, 1960, and the Court having heard the argument of counsel and due deliberation having been had thereon, it is

ORDERED that the motion is granted to the extent that the enforcement of said judgment is suspended and enjoined for a period of 20 days from the date hereof in order to permit defendant, if so advised, to apply to the United States Circuit Court for the Second Circuit for an order suspending the enforcement of the said judgment pending the hearing and determination of said defendant's cross-appeal.

Dated: June 20, 1960

/s/ SYLVESTER J. RYAN
United States District Judge

Exhibit B

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a stated term of the United States Court House in the City of New York on the eighth day of July, one thousand nine hundred and sixty.

Present—Hon. HENRY J. FRIENDLY, Circuit Judge.

UNITED STATES OF AMERICA,
Plaintiff-appellant-appellee,

v.

ST. REGIS PAPER COMPANY,
Defendant-appellee-appellant.

A motion having been made herein by counsel for the defendant-appellant for a stay pending appeal,

Upon consideration thereof, it is

ORDERED, that the motion for a stay pending appeal be and it hereby is granted on the conditions that the defendant-appellant file and serve its brief and appendix on or before August 26, 1960.

FURTHER ORDERED, that the argument of the appeals be and it hereby is set for the week of September 26, 1960.

/s/ A. DANIEL FUSARO
Clerk